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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,162	09/12/2000	Mark Robert Sivik	7886	6111

27752 7590 08/18/2003

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[REDACTED] EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 08/18/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>
	09/660,162	SIVIK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Brian P Mruk	1751

– The MAILING DATE of this communication appears in the cover sheet with the correspondence address –

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 May 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 42 and 43 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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**DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed May 27, 2003. Applicant has amended claims 1, 5-6, 9-10, 12, 20, 24-29, and 38-40. Claims 42 and 43 remain withdrawn from consideration. Currently, claims 1-43 remain pending in the application.

The examiner notes that applicant's amendment lists claims 7-8 and 42-43 as being withdrawn. It appears to the examiner that applicant is attempting to cancel claims 7-8 and 42-43. Although claims 7-8 and 42-43 have not been formally canceled, the examiner suggests that applicant should formally cancel claims 7-8 and 42-43 (i.e. with the term canceled and not withdrawn) in their next response.

2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 8.

3. The objection of claims 12 and 38-40 is withdrawn in view of applicant's amendments and remarks.

4. The rejection of claims 20, 21 and 23 under 35 U.S.C. 112, first paragraph, is withdrawn in view of applicant's amendments and remarks.

5. The rejection of claims 5, 12, 20, 21, and 23 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments and remarks.

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6. The rejection of claim 36 under 35 U.S.C. 112, second paragraph, is maintained for the reason of record.

7. The rejection of claims 1-7, 10-14, 16-17, 22, 31-32, 34, 36-37 and 41 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Beyer et al, DE 2,252,186, is withdrawn in view of applicant's amendments and remarks.

8. The rejection of claims 1-7, 10-14, 16-17, 22, 31-37 and 41 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wolf et al, WO 95/13260, is withdrawn in view of applicant's amendments and remarks.

9. The rejection of claims 1-37 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,506,945 is maintained for the reason of record.

## **NEW GROUNDS OF REJECTION**

### ***Claim Objections***

10. Claim 5 is objected to because of the following informalities: The examiner notes that claim 5 contains duplicates of each recited formula. The second occurrence of

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each formula should be removed from instant claim 5. Appropriate correction is required.

***Response to Amendment***

11. The amendment filed May 27, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The newly added groups (ii)-(v) for the variable R<sup>2</sup> in instant claim 1, and the newly added limitations in instant claims 6 and 10 are not supported by the instant specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claims 1-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the examiner notes that the

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newly added groups (ii)-(v) for the variable R<sup>2</sup> in instant independent claim 1, and the newly added limitations in instant claims 6 and 10 are not supported by the instant specification.

***Response to Arguments***

14. Applicant's arguments filed May 27, 2003 have been fully considered but they are not persuasive.

Applicant argues that instant claim 31 recites a process step (d) that provides proper antecedent basis for the limitations recited in instant claim 36. However, the examiner asserts that instant claim 31, from which instant claim 36 depends on, does not recite that step (d) produces a mixture. Thus, for instant claim 31 to provide proper antecedent basis for claim 36, claim 31 needs to recite that step (d) forms a mixture after quenching with a base.

The examiner notes that applicant will submit a Terminal Disclaimer to overcome the double patenting rejection of instant claims 1-37 over claims 1-17 of U.S. Patent No. 6,506,945.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk  
August 9, 2003

Brian P. Mruk

Brian P. Mruk  
Patent Examiner  
Tech Center 1700